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AUG 01 2008

In re Application of :
Donald R. Youell, Jr. :
Application No. 09/865,229 : **DECISION ON PETITION**
Filed: May 25, 2001 :
Attorney Docket No. ACP 2-021 :

This is a decision on the petition under the unavoidable provisions of 37 CFR 1.137(a), filed April 14, 2008, to revive the above-identified application.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

This application became abandoned as a result of petitioner's failure to take appropriate action in a timely manner after the decision of August 10, 2007 by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. *See* 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on October 11, 2007. *See* MPEP 1214.06. On April 14, 2008, the present petition to revive under 37 CFR 1.137(a) was filed. Alternatively, petitioner requests revival under the provisions of 37 CFR 1.137(b).

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d). The petition lacks items (1) and (3).

In regard to item (1) - Petitioner did not submit the required reply.

In regard to item (3) - Petitioner asserts that neither the Board's decision of August 10, 2007 or the Notice of Abandonment of October 25, 2007 were received. However, a review of the written record indicates that there was no irregularity in the mailing of either or the actions, and, in the absence of an irregularity, there is a strong presumption that the Office communications were properly mailed to the practitioner at the address of record. This presumption may be

overcome by a showing that the Office actions were not in fact received. The evidence submitted is insufficient to show that the Office communications were not received. Accordingly, the showing of record is not sufficient to establish to the satisfaction of the Director that the delay was unavoidable within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a). *See* MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay.

The petition under 37 CFR 1.137(b) is **DISMISSED**.

Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an “unintentionally” abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was “unavoidable.” This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). However, since a petition to revive under 37 CFR 1.137 must be accompanied by, *inter alia*, the required reply, the alternative petition under the provisions of 37 CFR 1.137(b) cannot be granted at this time.

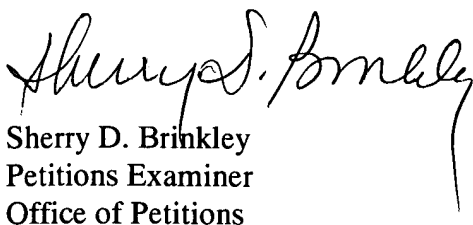
Any further petition to revive under the provisions of 37 CFR 1.137(a) or 37 CFR 1.137(b) must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** a final agency action within the meaning of 5 U.S.C. § 704. The reconsideration request should include a cover letter entitled “Renewed Petition” under 37 CFR 1.137(a) **or** 37 CFR 1.137(b) and should be addressed as follows:

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 Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions